F. No. 195/438/16-RA
F. No. 195/444/16-RA

REGISTERED SPEED POST AD

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/438/16-RA /6203
F. No. 195/444/16-RA Date of Issue: 02.10.2022

ORDER NO.1000-1001/2022-CX(WZ)/ASRA/MUMBAI DATED 31.10.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant :	M/s. Harman Finochem Ltd. Plot No. A -100, Five Star MIDC, Shendra, Aurangabad-431210
Respondent :	Commissioner of CGST & Central Excise, Aurangabad.
Subject :	Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. NGP/EXCUS/000/APPL/876/15-16 & NGP/EXCUS/000/APPL/877/15-16 both dated 19.01.2016 passed by the Commissioner (Appeals), Central Excise, Nagpur.

ORDER

1. These revision applications have been filed by M/s. Harman Finochem Ltd. Plot No. A -100, Five Star MIDC, Shendra, Aurangabad-431210 (hereinafter referred to as "the applicant") against Orders-in-Appeal No. NGP/EXCUS/000/APPL/876/15-16 & NGP/EXCUS/000/APPL/877/15-16 both dated 19.01.2016 passed by the Commissioner (Appeals), Central Excise, Nagpur Commissioner (Appeals), Central Excise, Nagpur.

2. The applicant, ie. M/s. Harman Finochem Ltd., manufacturer of excisable goods they also export the excisable goods and claim rebate of duty paid on such exports under Rule 18 of the Central Excise Rules, 2002. The applicant exported excisable goods and claimed rebate of duty paid on the CIF value, which were sanctioned by the rebate sanctioning authority i.e. Assistant/Deputy Commissioner, Central Excise and Customs, Aurangabad-I Division vide various rebate Order - in- Originals from the period 2007 to 2014. However, on scrutiny of the documents submitted it was seen that there was a difference in FOB value shown in shipping bills and the transaction value shown in central excise invoices and ARE-1s. This difference represented Freight Charges and Insurance. While determining the value for the purpose of export, the applicant had included freight charges and insurance charges and paid duty thereon and claimed rebate on that element also. Therefore, Show Cause Notices were issued wherein it was alleged by department that no rebate is admissible on duty paid element of freight charges and insurance and vide Order-in-Original No. 21-34/CEX/AC/A'BAD,Dn-I/14-15 dated 29.01.2015 & No. 11-58/CEX/DC/14-15 dated 20.01.2015 Assistant/Deputy Commissioner, Central Excise and Customs, Aurangabad-I Division the differential/excess rebate claim sanctioned in cash was ordered to be recovered alongwith interest as per provisions of section 11A read with section 11AB/11AA and section 11B of Central Excise Act, 1944.

3. Being aggrieved with the above, the applicant preferred an appeal with the appellate authority, who, vide impugned appellate order, upheld the Order dated 29.01.2015 and 20.01.2015.

4. Being aggrieved, the applicant filed aforementioned revision applications against the impugned Order in Appeal on the following common grounds that: -

4.1 The learned Commissioner (Appeals) failed to appreciate that Notification 19/2004-CE(NT) dated 6.9.2004 under Rule 18 of the Central Excise Rules, 2002 Government has directed that rebate of the whole of the duty paid on all excisable goods exported is to be paid.

4.2 The learned Commissioner (Appeals) failed to appreciate that the rebate was granted after studying all the documents and after proper application of mind. The Assistant Deputy Commissioner had issued and passed speaking orders in each case. These orders are unchallenged. No appeal was filed by the department. While such orders are in existence, merely issuing show cause notice for recovery of alleged excess Rebate was not proper. The learned Commissioner(Appeals) ought to have held that the order sanctioning rebate had become final in as much as no action was taken under Section 35E by the Commissioner of Central Excise within the statutory period of three months. He ought to have held that the show cause notices were not maintainable and were misconceived. Further, that the proceedings were hit by limitation and barred by time.

4.3 The learned Commissioner (Appeals) erred in attempting to distinguish the CBEC Circular No. 510/06 2000-CX. As per the said circular, the Jurisdictional Assistant Commissioner had to scrutinize the correctness of the assessments. In the instant case this procedure laid down by the Board was not followed and instead show cause notices were issued for recovery of alleged excess rebate without reopening/reviewing the assessments. The department's case is that higher duty was assessed and paid at the stage of clearance for export. However, the earlier assessments remained undisturbed.

4.4 The Learned Commissioner(Appeals) erred in relying on of decision in the case of Wellspring Universal (2004(313) ELT 881(GOI) and on other case law in pars 13 & 15 of his order. The judgment is distinguishable on facts. He failed to appreciate that the judgement in the case of Wellspring Universal relied upon the Supreme Court judgement in the case of Jain Shudh Vanaspati Ltd. The facts of Jain Shudh Vanaspati Ltd. case were totally different. The said case refers to an order of clearance under Section 47 of the Customs Act and the Bill of Entry itself is the order of clearance. In such cases there is to speaking order-in-original. Thus the said judgment is distinguishable. Further, in the said case of Wellspring the Government of India relies upon the Home Bombay High Court Judgement in the case of Indian Dyestuff Industries Ltd. [2003 (161) ELT 12(Bom)] wherein conditional refund orders were passed and refunds were granted after taking undertaking from the assessee treating the issue of refund to be pending and could be recovered by the revenue subject to the decisions of the Apex Court. Therefore the Hon'ble Bombay High Court justified the

action of the revenue in invoking the jurisdiction u/s. 11A of the Central Excise Act. On the other hand, in the instant case, detailed and speaking orders in-original were issued sanctioning the rebate. The said orders are final. While the said orders are in existence, another order cannot be issued reducing the rebate for the same consignments. The said orders cannot be set aside in this manner by an officer of the same rank.

4.5 The learned Commissioner (Appeals) ought to have quashed the demand notices on the ground that the department has failed to file an application under Section 35E for determining the legality and propriety of the assessment orders. There was nothing wrong in the rebate sanctioning orders because they were based on assessment orders which had already become final.

4.6 The Learned Commissioner(Appeals) erred in ignoring and overlooking the following judgments relied upon by them :-

(1) Dr. Reddy's Laboratories Ltd. -2014(309) ELT 243 (Del.)

(2) Balakrishna Industries Ltd-2014 (309)ELT 354(Tri.-Del.)

The Learned Commissioner(Appeals) erred in failing to deal with the following Judgements on CIF Value-FOB value

(1) Siddhartha Tubes Ltd.-1999 (110) ELT 1000(Tribunal)
(2) M.F.Rings & Bearing Races Ltd.-2000 (119) ELT 219 (Tribunal)
(3) Bharat Chemicals-2004 (170) ELT 568 (Tri-Mum.))
(4) Gayatri Laboratories Pvt. Ltd.- 2006 (194) ELT 73 (Tri-Mum)
(5) Sterlite Industries (1) Ltd. - 2009 (236) ELT 143(Tri-Chennai)
(6) Arvind Ltd.- 2014 (300) ELT 481 (Guj.)

4.7 The learned Commissioner(Appeals) failed to deal with the following judgements

(1) Voltas Ltd - 2006 (202) ELT 355 (Tri-Bang.)

Order of Assistant Commissioner sanctioning refund not challenged by the revenue. Show Cause Notice issued for recovery of erroneous refund not sustainable.

(2) Overseas Engineers - 2007 (215) ELT 513(Tri-Ahmd.)

Orders sanctioning refund not appealed against. Recovery of refund by issue of show cause notice under Section 11A is not sustainable.

(3) Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC)

Non challenge of a appealable order - it is not open to question the correctness of the order subsequently.

(4) Priaya Blue Industries Ltd. - 2004 (172) ELT 145 (SC)
Officer considering refund claim cannot sit in appeal over an assessment.

4.8 The learned Commissioner failed to appreciate that as per the language of Rule 18 of Central Excise Rules, 2002, Rebate of the duty paid on excisable goods bas to be granted. Further. Notification No. 19/2004-CE (N.T.) issued under Rule 18 also states that Central Government directs that there shall be granted rebate of whole of duty paid on all excisable goods. Thus, Rule 18 as also Notification No. 19/2004 uses the term duty paid for the grant of rebate. The Notification goes one step ahead to say that the rebate shall be allowed to the extent of whole of duty paid. Therefore, in the absence of restriction for grant of rebate to the extent of duty payable as against duty paid on the goods exported, the benefit of rebate cannot be reduced on the ground that the duty payable was less than the duty paid.

4.9 The learned Commissioner failed to appreciate that the denial of rebate on part of the duty paid on the goods exported on the ground that such duty was not payable is untenable in law in view of the decision of the Hon'ble High Court in the case of Arvind Ltd. v UO1-2014 (300) ELT 481 (Guj) in which it is held that even if the duty paid on the export goods was according to the department not payable. that is no reason for denying the rebate of the duty paid on the export goods.

4.10 The learned Commissioner failed to appreciate that the lower authority erred in holding that the rights vested in the authority under Section 11A of Central Excise Act, 1944 to demand the amount of erroneous refund is without prejudice to any review or appeal. He erred in not appreciating that it is well settled legal position that where by a speaking Order in Original, rebate has been granted, a demand for such rebate is not maintainable when such Order in Original has not been appealed and has become final.

4.11 The learned Commissioner failed to appreciate that the decisions relied upon by the lower authority are inapplicable to the facts of the present case since these decisions related to cases where the refund had been rejected in the first instance by the rebate sanctioning authority whereas in the present case the rebate had been sanctioned and paid to the Applicant same is sought to be revered without challenging/ appealing the orders granting the rebate.

4.12 Without prejudice to the aforesaid grounds, it is submitted that the lower authority erred in holding that the value relevant for determining the grant of rebate is the FOB value mentioned in the Shipping Hills and not the value mentioned in the ARE-1 Forms and the Central Excise Invoices. The Central Board of Excise and customs had by Circular No 203/17/06 CX dated 26-4-1996 clarified that the value relevant for grant of rebate is the ARE-I value on which Excise duty is paid and not the FOB value mentioned in the Shipping Bills. He erred in not appreciating that the Excise duty is payable on the transaction value ie. value actually paid by the buyer which in this case is the value mentioned in the ARE-1 form and the Central excise Invoice.

4.13 Without prejudice to the aforesaid grounds, the leaned Commissioner Appeals) failed to appreciate that the denied for interest is untenable in law. While demanding the rebate, the lower authority has himself held that the Applicant can take re-credit of the said amount in Cenvat account which means that the entire situation is revenue neutral and hence there is no loss to the revenue. Consequently there is no question of payment of interest. Reliance was then the decisions of the Tribunal in the

case of Paper Products Ltd. v. CCE-2013 (292) ELT 389 and Reliance Industries Ltd v CCE - 2013 (292) ELT 378. However, the Learned Commissioner failed to deal with the said judgment. He erred in relying on the judgement in the case of Divi's Laboratories Ltd. In the said case the assessee was not entitled to take credit of the amount which was given to him as rebate. The rebate was sanctioned and the assessee had to return the same with interest. Thus in the said case the situation was not revenue neutral.

4.14 The Learned Commissioner(Appeals) failed to appreciate that some notices were issued beyond the period of one year. Just because this submission was made orally, he ignored and overlooked the same. The Applicants enclosed a Statement containing details of such notices along with corresponding ARE Exhibit Duty endorsed by customs authorities. Thus, the demands to the extent of Rs.4,93,000/- are barred by time and hit by limitation.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. However, the respondent failed to make any submissions.

6. Personal hearing in this case was held on 14.06.2022. Shri Anil Balani, Advocate duly authorized, appeared on behalf of the applicant and reiterated his earlier submissions. He requested that since duty has been paid on the value mentioned in Shipping Bill they should be sanctioned rebate of whole amount. However, the respondent did not appear for the personal hearing on the appointed date, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity and therefore, Government proceeds to decide these cases on merits on the basis of available records.

7. The issue involved in all these Revision Applications being common, they are taken up together and are disposed off vide this common order.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

9. Government notes that the points to be decided here is:-

9.1 Whether refund sanctioned earlier in cash by issuing Order-in-Original by Assistant/Deputy Commissioner, which were not challenged by filing appeal, should be recovered by issuing Show Cause Notices for recovery of the purported excess payments;

9.2 whether the duty was required to be paid on the FOB Value and the excess payment i.e. the difference between the CIF value and FOB value is recoverable in cash alongwith interest.

10. Before adverting to the merits of the opposing contentions, it is pertinent to refer to statutory provisions relevant to the case. The applicant has in the revision application has submitted that the impugned order is non est in law and has averred that no review of the sanctioned orders were done and as no appeal was filed against the sanctioned order, they had attained finality.

10.1 Government observes that while the sanction of the rebate claims are on record, the instant case has relevance to the statutory provisions pertaining to the recovery of such sanctioned rebate claims. In this regard Commissioner (Appeals), has relied on decision in the case of Wellspring Universal (2004(313) ELT 881(GOI) which has discussed in detail this issue and categorically taken a stand as follows:

"Refund in cash - Refund in cash of higher duty paid on export product which was not payable is not admissible - Excess duty paid by applicant allowed to be re-credited in Cenvat Credit Account. [para 9]

Recovery - Recovery of erroneous refund/rebate - Recovery of erroneous refund/rebate sanctioned under an order can be recovered by invoking provisions of Section 11A of Central Excise Act, 1944, without taking recourse to provisions of Section 35E ibid and filing appeal against the order under which refund was initially sanctioned - Section 11A ibid - Section 35E ibid. [2003 (161) E.L.T. 12 (Bom.), upheld by Supreme Court in 2004 (163) E.L.T. A56 (S.C.) followed] [para 11]"

10.2 Government notes that the issue has been discussed at various judicial forums and the Courts have held that Section 11 A is an independent substantive provision and is a complete code in itself for realization of excise duty erroneously refunded ant there are no pre-conditions attached for issuance of notice under Section 11 of the Act for recovery of amount erroneously refunded. Government relies on the observations of the Hon'ble High Court of Judicature at Bombay in the case of Indian Dyestuff Industries Ltd vs. Union of India [2003(161) E.L.T. 12(Bom)] at Para 15 which is reproduced as under

> ***"15.*** *The submissions of the Petitioners that when the refund was granted as a consequential relief by accepting the order-in-original dated 11-9-1984, it was not open to the Revenue to resort to Section 11A of the said Act and purport to recover the amount refunded on the ground that the amount was erroneously refunded and that if at all the revenue was aggrieved by the order-in-original, the proper course open to the revenue was to file an appeal u/s. 35 of the said Act and that having accepted the order-in-original dated 11-9-1984, it was not open for the revenue to invoke jurisdiction u/s. 11A of the said Act have no merit, because, before invoking the jurisdiction u/s. 11A of the said Act, it was not mandatory for the Revenue to challenge the order-in-original by filing appeal. The show cause notice u/s. 11A of the said Act can be issued, if there are grounds existing such as short levy or short recovery of erroneous refund etc. under the Scheme of the said Act. The only way by which an erroneously refunded duty could be recovered is by resorting to the powers conferred under Section 11A. The issuance of a notice under Section 11A is a primary and fundamental requirement for recovery of any money erroneously refunded. Section 11A is the fountain head of all the powers for recovery of any money erroneously refunded. There are no preconditions attached for issuance of notice under Section 11A for recovery of the amount erroneously refunded.*

There is no requirement of passing an adjudication order and if adjudication order is passed, there is no need to initiate appellate proceedings before issuing notice under Section 11A. Second proviso to Section 35A(3) which states that no order-in-appeal requiring the appellant to pay any duty erroneously refunded shall be passed unless the Appellant is given show cause notice within the time limit prescribed in Section 11A also shows that Section 11A is a independent substantive provision and it is a complete code in itself for realisation of excise duty erroneously refunded. Under the circumstances, the contention of the Petitioner that notice under Section 11A could not be issued without challenging the order-in-original is without any merit."

Government notes that the above order of the High Court of Judicature in Bombay has been maintained by the Hon'ble Supreme Court in the case of Navinon Ltd vs. UOI [2004(163)E.L.T A 56(SC)]

10.3 Further Government also relies on the following case laws which echo the decisions of the Courts as quoted supra:

(i) Bharat Box Factory vs. Commissioner of Central Excise, Ludhiana [2005(183) E.L.T. 461(Tri-Del)]

(ii) GOI order in Re: Evershine Polyplast Pvt Ltd [2012(278) E.L.T 133(GOI)

10.4 Government notes for a better understanding of the statutory provisions and applicability in cases of erroneous recovery of refunds, the provisions of Section 11A of the Central Excise Act are reproduced as under :-

"Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-

(i) his own ascertainment of such duty; or

(ii)the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.

(2) .....

(3) .....

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-
(a) fraud; or
(b) collusion; or
(c) any wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with

interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

Explanation 1. *- For the purposes of this section and section 11AC,-*
(a) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
(b) .....;
(i).....;
(ii).....;
(iii).....;
(iv).....;
(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;
[(vi) .....
....."

10.5 Government notes that as stated above, the statute in the Central Excise Act, has provided a remedy in the event of a refund having been having been sanctioned erroneously and recovery of the same in the light of subsequent omission on the part of the applicants.

10.6 The applicant contention that the majority of the show cause notices issued to them are time barred. Commissioner(Appeals) had also observed that :-

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The appellant has not produced anything on record to prove that many of these SCNs were infact time barred. Therefore, I do not choose to discuss anything further in this matter as the plea of the appellant is not substantiated with facts on record. I also find that no where in the appeal book have the appellants

mentioned this contention but the same was merely stated during the second personal hearing."

They have not produced anything on record to prove that many of the Show Cause Notices are in fact time barred except an excel sheet without any documentary evidences to back up their claim. Therefore, the applicants' contentions remain unsustainable.

10.7 Government observes that the impugned Orders-in-Original has clearly brought out that on scrutiny of the documents submitted that there was a difference in FOB value shown in Shipping Bills and the transaction value shown in Central Excise Invoices and ARE-1's. This difference represents Freight Charges and Insurance, which the applicant had included in the value for duty payment, refund was claimed on that element also. The misdeclarations, suppression and misrepresentation on the part of the applicant and the objections on the part of the applicant on this count are flawed and thus rejects the same and moves on to merits of the case.

11. Government observes that Adjudicating authority in his order has observed that the subject goods have been exported directly from the factory of the assessee. The relevant statutory provisions for determination of value of excisable goods have been duly examined in GOI order No.97/2014-Cx dated 26.03.2014 In Re: Sumitomo Chemicals Pvt. Ltd. [2014(308) E.L.T. 198 (G.O.I.)] which are reproduced below for proper understanding of the issue of valuation:-

8.1 *As per basic applicable Section 4(1)(a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall,*

(a)In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b)In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

8.2 *Word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows :*

"'Sale' and 'Purchase' with their grammatical variations and cognate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

8.3 *Place of Removal has been defined under Section 4(3)(c)(i), (ii), (iii) as :*

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii)A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

8.4 *The Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is also relevant which is reproduced below :-*

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.*

Explanation 1. - "Cost of transportation" includes -

(i) The actual cost of transportation; and

(ii)In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

8.5 *Government observes that from the perusal of above provisions it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. Under such circumstances, the place of removal is the port of export where sale takes place. The GOI Order No. 271/2005, dated 25-7-2005 in the case of CCE, Nagpur v. M/s. Bhagirth Textiles Ltd. reported in 2006 (202) E.L.T. 147 (GOI) has also held as under :-*

"the exporter is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on the transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944". It is clear from the order that in any case duty is not to be paid on the CIF value.

8.6 *Supreme Court in its order in Civil Appeal No. 7230/1999 and CA No. 1163 of 2000 in the case of M/s. Escorts JCB Ltd. v. CCE, Delhi reported in 2002 (146) E.L.T. 31 (S.C.) observed (in para 13 of the said judgment) that*

"in view of the discussions held above in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable".

Further, CBEC vide it (Section) 37B Order 59/1/2003-CX, dated 3-3-2003 has clarified as under :-

Assessable value' "7. is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [Section 4(4)(b), sub-clauses (i), (ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under Section 4 remained substantially the same. Section 4(3)(c)(i) [as on 1-7-2000] was identical to the earlier provision contained in Section 4(4)(b)(i), Section 4(3)(c)(ii) was identical to the earlier provision in Section 4(4)(b)(ii) and Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier Section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods."

12. As regards rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value Government relies on GOI Order dated 26.03.2014 in Re: Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] wherein GOI held that:

"9. Government notes that in this case the duty was paid on CIF value as admitted by applicant. The ocean freight and insurance incurred beyond the port, being place of removal in the case cannot be part of transaction value in terms of statutory provisions discussed above. Therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied. Applicant has contended that if rebate is not allowed then the said amount may be allowed to be re-credited in the Cenvat credit account. Applicant is merchant-exporter and then re-credit of excess paid duty may be allowed in Cenvat credit account from where it was paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944".

Government therefore, holds that the excess duty paid by the applicant's manufacturers over and above the FOB value has to be re-credited in the

Cenvat Credit account from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

13. Government observes that the Commissioner (Appeals) in his impugned order has relied upon Board Circular No.510/06/2000-CX dated 03.02.2000 and Circular No.687/3/2003-CX dated 03.01.2003. In this regard, the Government observes that w.e.f. 1-7-2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act and therefore said Circular issued prior to the introduction of transaction value concept, cannot be strictly applied after 1-7-2000. Further, as per para 3(b)(ii) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, the rebate sanctioning authority has to satisfy himself that rebate claim is in order before sanctioning the same. If the claim is in order he shall sanction the rebate either in whole or in part. The said para 3(b)(ii) is reproduced below :

"3(b) Presentation of claim for rebate to Central Excise :-

(i) .....

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The said provisions of this notification clearly stipulate that after examining the rebate claim, the rebate sanctioning authority will sanction the claim in whole or in part as the case may be depending on facts of the case.

Government notes that said notification issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be following for claiming as well as sanctioning rebate claims of duty paid on exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions is in order. Therefore, the circular of 2000 cannot supersede the provisions of Notification No. 19/2004-C.E. (N.T.).

14. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeals filed by the applicant. Thus, Government does not find any infirmity in the Orders-in-Appeal No. NGP/EXCUS/000/APPL/876/15-16 & NGP/EXCUS/000/APPL/877/15-16 both dated 19.01.2016 passed by the Commissioner (Appeals), Central Excise, Nagpur, and, therefore, upholds the impugned order in appeal.

15. The Revision Applications are dismissed being devoid of merit.

31/10/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1000/2022-CX(WZ)/ASRA/MUMBAI DATED 31.10.2022.

To,
M/s. Harman Finochem Ltd.
Plot No. A -100,
Five Star MIDC,
Shendra, Aurangabad-431210.

Copy to:

1. Commissioner of CGST & Central Excise, Aurangabad.
2. Commissioner of CGST & Central Excise(Appeals), Nagpur.

3. Assistant/Deputy Commissioner, Aurangabad Division -I
4. Mr. Anil Balani, Advocate, 717, Raheja Chambers, 213, Free Press JournalMarg, Nariman Point, Mumbai-400021.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File.
7. Spare Copy.